

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 16-94
)	
SHAWN ROBINSON,)	Judge Cathy Bissoon
)	
Defendant.)	

ORDER

Defendant’s Motions (Docs. 133 & 143) for compassionate release, based on Covid-19 related health concerns, will be denied. Defendant’s BMI, of 33.6, is insufficient to present an extraordinary and compelling reason warranting release. *See U.S. v. Gonzalez*, 2021 WL 662496, *2 (E.D. Pa. Feb. 19, 2021) (collecting cases in this Circuit holding same). His other identified impairment, a “history of smoking,” appears to reference to his past, daily use of marijuana; and the scientific literature referenced by defense counsel relates to tobacco smoking.

Even assuming Defendant’s obesity and smoking, alone or combined, present significant risk, the Court is required to balance them against the considerations resulting in his original sentence, pursuant to 18 U.S.C. § 3553. Defendant has only served approximately 36 months of his 84-month sentence, for conspiring to possess with the intent to distribute, and distribute, 100 grams or more of heroin; and possessing with the intent to distribute 100 grams or more of heroin. *See* Judgment (Doc. 91). In imposing sentence, the Court noted his *extensive* criminal history, the serious nature of his offenses, and the needs for just punishment, deterrence and rehabilitation. Those considerations remain salient, and they are not outweighed by the risks associated with Defendant remaining incarcerated.

The government, moreover, has supplied evidence showing that Defendant recently was offered the Covid vaccine, and he refused it. Whether that decision was animated by his present request for release, vaccine-hesitancy, or both, the Court can only speculate. His refusal is notable, however, given the widescale desperation – of many in the general public – to acquire the same opportunity he has declined. While, to be clear, the Court would deny his Motion in any event, it seems fair to conclude that his decision significantly undermines the foundational premises of his Motion. *See U.S. v. Gonzalez Zambrano*, 2021 WL 248592, *5 (N.D. Iowa Jan. 25, 2021) (although defendant requested that the court take immediate action to release her due to the threat of COVID-19, she was not willing to accept inoculation, and “[i]t would be paradoxical to endorse a system whereby a defendant could [proffer] extraordinary and compelling circumstances for compassionate release” by refusing “health care [offered] to them”).

Having weighed the specific facts and circumstances regarding Defendant, vis-à-vis Covid-19 – along with all of the considerations in Section 3553 – the Court concludes that release is unwarranted. For these reasons, along with the others identified in the government’s opposition (Doc. 152), Defendant’s Motions (**Docs. 133 & 143**) for compassionate release are **DENIED**.

IT IS SO ORDERED.

February 23, 2021

s/Cathy Bissoon

Cathy Bissoon

United States District Judge

cc (via ECF email notification):

All Counsel of Record